

STATE OF MICHIGAN
COURT OF APPEALS

LISA PATSON,

Plaintiff-Appellee,

v

MYLES SPENGLER,

Defendant-Appellant.

UNPUBLISHED

June 20, 2006

No. 266213

Genesee Circuit Court

Family Division

LC No. 93-023440-DP

Before: Smolenski, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Challenging the legal and factual bases for the trial court's findings regarding a number of the statutory best interest factors of MCL 722.23, defendant appeals as of right the trial court's order denying his petition for change of custody. We affirm.

Defendant argues that the trial court erred in finding that the best interest factors set forth in MCL 722.23(a), (b), (d), (e), (f), (h), and (k) favored either plaintiff or neither party. This Court reviews a trial court's findings of fact regarding the statutory best interest factors to determine whether they are against the great weight of the evidence and must sustain those findings "unless the evidence clearly preponderates in the opposite direction." *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). Our review of the record in this matter demonstrates that as to each of the factors challenged by defendant on appeal, there was evidence to support a finding in favor of either party. Thus, giving the required deference to the trial court, see *Fletcher v Fletcher*, 447 Mich 871, 889-890; 526 NW2d 889 (1994), we cannot conclude that the court's findings on the various best interest factors mandate reversal. Indeed, it is well settled that the trial courts are better situated to weigh evidence and assess credibility, and are thus "in a superior position to make accurate decisions concerning the custody arrangement that will be in the child's best interests." *Id.* Here, the record demonstrates that the trial judge properly considered the competing proofs and reached a reasoned decision not inconsistent with the

evidence. *Foskett, supra*. Under such circumstances, we must affirm the trial court's findings.¹ *Id.*; see also MCL 722.28.

Furthermore, although defendant is correct that the trial court did not state at the hearing on defendant's motion which party it found to be favored under factors (a) and (k), see MCL 722.23(a) and (k), we note that the order later entered by the court clearly states that factor (a) favored plaintiff, while factor (k) favored defendant. It is well established that courts speak through their written judgments and orders, not their oral statements or opinions. *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988); *Stackhouse v Stackhouse*, 193 Mich App 437, 439; 484 NW2d 723 (1992). Therefore, we find no merit in defendant's claim that the trial court committed clear legal error in failing to state these findings at the hearing on defendant's motion. MCL 722.28.

Nor do we find merit in defendant's claim that the trial court committed clear legal error in relying, in part, on defendant's unmarried cohabitation in finding that plaintiff was favored under factor (f), which requires the court to consider "[t]he moral fitness of the parties involved." See MCL 722.23(f). Although unmarried cohabitation, standing alone, is not sufficient to constitute immorality under factor (f), it is nonetheless a fact properly considered when evaluating the parties under MCL 722.23(f). See *Helms v Helms*, 185 Mich App 680, 684-685; 462 NW2d 812 (1990). Here, in determining that plaintiff's moral fitness prevailed, the trial court relied on defendant's unmarried cohabitation, the lack of any certainty in the permanence thereof, and the fact that defendant had already fathered two children out of wedlock. These facts, when considered together, reflect on defendant's "fitness" as a parent and were thus appropriate for the trial court to consider when evaluating factor (f). *Fletcher, supra* at 886-887; see also *Helms, supra* (a party's out-of-wedlock pregnancy constitutes an "aggravating factor" properly considered in evaluating the child's best interests).

Affirmed.

/s/ Michael R. Smolenski
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

¹ We note, however, that this is a case for which the conclusion on appeal could have been different had the applicable standard of review been less deferential. Defendant presented evidence sufficient to permit the trial court to conclude that many of the best interest factors favored defendant. However, the trial court did not accept all of the facts presented by defendant and because the trial court's findings were not against the great weight of the evidence, we must affirm its decision to deny defendant's motion for a change of custody regardless whether, upon review de novo, we might have concluded differently.